

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Duke Energy Guadalupe Pipeline, Inc.

Docket Nos. PR05-17-000 and
PR05-17-001

ORDER APPROVING SETTLEMENT

(Issued December 29, 2005)

1. On November 18, 2005, Duke Energy Guadalupe Pipeline, Inc. (Guadalupe) filed an Offer of Settlement (Settlement) to resolve all issues raised in its petition for rate approval filed on August 1, 2005 in Docket No. PR05-17-000. Guadalupe's rate petition pertains to firm and interruptible transportation services rendered under section 311 of the Natural Gas Policy Act of 1978 (NGPA). On November 23, 2005, Mewbourne Oil Company (Mewbourne) filed Initial Comments in opposition to the Offer of Settlement filed by Guadalupe. On December 13, 2005, Guadalupe filed Reply Comments. We find that the Settlement represents a fair and equitable resolution of the issues in this proceeding, and accordingly the settlement is approved, without modification.

Background

2. Guadalupe is an intrastate pipeline within the meaning of section 2(16) of the NGPA which operates wholly within the State of Texas.

3. On August 1, 2005, in Docket No. PR05-17-000, Guadalupe filed a Petition for Rate Approval (Petition) pursuant to section 284.123(b)(2) of the Commission's regulations. Guadalupe submitted its Petition in accordance with a filing requirement established in a Letter Order dated December 19, 2002, in Docket No. PR02-21-000.¹ In its Petition, Guadalupe proposed a maximum system-wide rate for firm and interruptible transportation service of \$.1906 per MMBtu, plus a 1.85 percent fuel charge. Guadalupe

¹ 101 FERC ¶ 61,302. The Letter Order approved a settlement which established a maximum rate of \$0.1726 per MMBtu for section 311 system-wide transportation service and parking and lending service as well as a demand charge of \$1.9587 per MMBtu and a commodity charge of \$0.237 per MMBtu for section 311 Power and Peaking Service (P&PS). In addition, a 1.94 percent fuel charge was established on all services rendered.

proposed to stop offering its existing Power and Peaking Service (P&PS), because it had executed only two contracts for the P&PS since its inception, one of which had already terminated.²

Public Notice, Interventions, and Protests

4. Public notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 46,830 (2004), with comments, interventions and protests due on August 25, 2005. Pursuant to Rule 214, all timely-filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the existing parties.

5. On August 17, Mewbourne filed a motion to intervene and protest. In its protest, Mewbourne states it is an active driller of gas wells in the Permian Basin. Mewbourne states that much of its production in southeastern New Mexico can reach Waha market hub, where Guadalupe's pipeline begins, through the gathering system of a large gas gathering company, which connects to Mewbourne's wells at or near the wellhead, and through an interstate pipeline that connects with the gathering system. Mewbourne states that, at times, the spot market price of natural gas at Waha can be high enough to absorb the intervening pipeline costs and still make Waha an attractive marketplace for Mewbourne's southeastern New Mexico gas. Mewbourne states the Waha spot market price is, of course, affected by the cost to move gas from Waha to the East on the Guadalupe pipeline system, among others. Mewbourne asserts that, as a result, the costs of transportation on the Guadalupe pipeline system can affect directly the value of Mewbourne's gas.

Settlement

6. A settlement of the issues in this proceeding was reached by Guadalupe and the Commission Staff. The major elements of the Settlement are as follows:

A. Effective August 1, 2005, Guadalupe is authorized to charge a maximum system-wide rate for firm and interruptible transportation of natural gas and parking and lending service of \$.1810 per MMBtu, plus a 1.85 percent Fuel and Lost and Unaccounted For charge on all services rendered on its intrastate pipeline system under NGPA section 311(a)(2).

² Guadalupe proposed to file an updated Statement of Operating Conditions removing references to P&PS once the second contract is terminated.

B. The Commission, through approval of this Settlement, represents that it is determining a fair and equitable rate for Guadalupe's transportation of natural gas under NGPA section 311(a)(2) only, and it is not determining rates for any other purpose.

C. Guadalupe will revise its Statement of Operating Conditions (Operating Statement) to include its maximum Fuel and Lost and Unaccounted For charge and to clarify that the Fuel and Lost and Unaccounted For charge will be charged in a non-discriminatory manner. Guadalupe will file its revised Operating Statement within 30 days of the date the Commission approves the Settlement.

D. On or before August 1, 2008, Guadalupe will file a petition for rate approval.

Comments on the Settlement

7. Mewbourne filed Initial Comments in opposition to the Settlement. Mewbourne objects to Guadalupe's proposed fuel charge of 1.85 percent. Mewbourne states that Guadalupe has calculated its proposed fuel charge using its entire system fuel consumption for the relevant periods. Mewbourne states, however, that Guadalupe at times discounts the fuel charge it assesses on its intrastate transportation customers.³

8. Mewbourne argues that since Commission policy precludes Guadalupe from discounting the fuel charge it assesses to interstate transportation customers,⁴ then in order for Guadalupe's fuel charge to interstate customers to be fair and equitable and not unduly discriminatory in favor of the intrastate transportation customers who receive fuel discounts, Guadalupe's fuel charge should be calculated in the following manner: the Commission should require Guadalupe first to deduct from its system-wide fuel consumption for the relevant periods, the total quantity of consumed fuel that Guadalupe failed to recover by virtue of discounts of such variable costs granted to its intrastate customers. Mewbourne asserts that only in this manner can the Commission ensure that Guadalupe's interstate customers are not harmed by subsidizing Guadalupe's intrastate

³ Mewbourne incorporates by reference its Exhibit "B" and "E" to Mewbourne's Protest in this proceeding. Exhibit "B" and "E" are copies of contracts between Guadalupe and certain intrastate customers that are on file with the State of Texas. Mewbourne directs the Commission to note that the fuel charge Guadalupe agreed to in the contract that bears Railroad Commission Tariff No. 9785, Exhibit "B" is only 1%; the other contract that bears Railroad Commission Tariff No. 9784, Exhibit "E" provides for a 0.5% fuel charge.

⁴ *Citing Colorado Interstate Gas Company*, 112 FERC ¶ 61,199 at P 19 (2005).

customers⁵ through a practice the Commission would assail as predatory pricing if it were perpetrated by an interstate pipeline.

9. Mewbourne states that any fuel discount (or subsidy) that Guadalupe elects to extend to its intrastate customers should come out of Guadalupe's pockets and not those of its interstate customers. Otherwise, Mewbourne asserts, Guadalupe's interstate customers, on a dekatherm basis, will be assessed a disproportionately greater part of Guadalupe's revenue requirement for fuel consumption than its intrastate customers, who alone enjoy discounts from Guadalupe's variable costs. On its face, Mewbourne would submit, such an outcome would be unfair, inequitable, unduly discriminatory and in contravention of clearly articulated Commission policy.⁶

10. On December 13, 2005, Guadalupe filed Reply Comments in support of the Settlement and in response to Mewbourne's Initial Comments. Guadalupe states that Mewbourne is incorrect in asserting that Guadalupe's method for calculating the Fuel Charge would require interstate shippers to subsidize the intrastate Shippers.

11. Guadalupe points to its response to staff's Data Request No. 5(c) of the August 1, 2005 Standard Data Requests, where Guadalupe explained that it calculates its Fuel Charge using an engineering study. Guadalupe states that the engineering study calculated the fuel percentage and lost and unaccounted for percentage for operational segments of the Guadalupe system. Guadalupe asserts that since the basis for the Fuel Charge calculation is an engineering study, the analysis is based upon actual fuel consumed and losses for the operational segments as a percentage of the total system throughput. Guadalupe states the engineering study does not take into account how the Fuel Charge is assessed. Guadalupe asserts that, as a result, any reduction in Fuel Charges negotiated for intrastate customers has no effect on Fuel Charges to NGPA section 311 interstate customers and certainly does not increase section 311 rates, because the fuel charges for both intrastate and interstate customers are based on the fuel use calculated for the various operational segments of the pipeline. Thus, Guadalupe

⁵ *Citing Tennessee Gas Pipeline Company*, 70 FERC ¶ 61,244 (1995) at p. 22 ("We see no reason to require Tennessee's existing customers subject to Tennessee's existing general Part 284 rates to subsidize Tennessee's [sic] intrastate business."); *Cranberry Pipeline Corp.*, 112 FERC ¶ 61,268 at P 18 (2005); *reh'g pending* ("Commission approval of this settlement rate would effectively allow Cranberry to use its interstate rates to subsidize its intrastate operations, by shifting excess cost recovery to interstate rates.").

⁶ *Citing Northern Natural Gas Company*, 113 FERC ¶ 61,119 at P 18 (2005).

concludes, its Fuel Charge does not result in any cross subsidization between classes of Shippers. Guadalupe states that it is solely at risk for any undercollection of the Fuel Charge.

12. Guadalupe further states that as part of Section IV of the Settlement, Guadalupe has modified the language in its Statement of Operating Conditions to specifically state that the Fuel Charge will be assessed in a non-discriminatory manner. Guadalupe requests that the Commission approve the Settlement as filed, without modification.

Discussion

13. This proceeding concerns Guadalupe's triennial rate filing to determine fair and equitable rates for its firm and interruptible transportation services provided under section 311 of the NGPA. A settlement was reached between Guadalupe and the Commission Staff that authorizes Guadalupe to charge a maximum system-wide rate for firm and interruptible transportation of natural gas and parking and lending service of \$.1810 per MMBtu, plus a 1.85 percent Fuel and Lost and Unaccounted For charge on all services rendered on its intrastate pipeline under section 311. The settled fuel charge of 1.85 percent is the same as proposed by Guadalupe in its Petition.

14. No party objects to the maximum rate of \$.1810 per MMBtu provided by the settlement. However, Mewbourne challenges the 1.85 percent fuel charge because Mewbourne is concerned that this fuel charge would discriminate unduly against shippers using Guadalupe's service under section 311, because, Mewbourne states, such rate is substantially higher than the fuel charges Guadalupe assesses on transportation for some of its intrastate customers. Guadalupe points to two intrastate contracts on file with the Railroad Commission of Texas that show that Guadalupe and the shipper for one contract agreed to a negotiated fuel charge of 1% and on another contract Guadalupe and the shipper agreed to a fuel charge of 0.5%. Mewbourne submits that it is unfair and inequitable for Guadalupe's shippers under section 311 of the NGPA to be required to subsidize the fuel consumption of Guadalupe's intrastate customers in this manner.

15. The record in this proceeding includes information that Guadalupe provided in support of its proposed rates, including its proposed fuel percentage.⁷ As Guadalupe explained in its response to Data Request No. 5(c), its 1.85 percent charge for fuel and

⁷ A fuel percentage is a calculation used to determine how much the pipeline company retains for the fuel it uses to transport the gas through the pipeline for its customers. The percentage is based on past experience with fuel used in compressor stations, lost and unaccounted-for gas and total throughput transported.

lost-and-unaccounted for gas is based on an engineering study. Guadalupe states that this study was based on Guadalupe's experience operating its system for the 12-month period ending March 2005.⁸ Guadalupe also included as an attachment to its data response a summary of the engineering study. In its Reply Comments, Guadalupe states that its engineering study does not take into account how the fuel charge is assessed. Guadalupe states that, as a result, any reduction in fuel charges negotiated for intrastate customers has no effect on the fuel charges to interstate 311 customers.

16. We find that Guadalupe's proposed fuel charge of 1.85 percent is calculated correctly, because it is based on actual fuel consumption as a percentage of total throughput. Mewbourne requests that the Commission require Guadalupe to deduct from its system-wide fuel consumption for the relevant periods, the total quantity of consumed fuel that Guadalupe failed to recover by virtue of discounts of its fuel charges granted to some of Guadalupe's intrastate customers. However, Guadalupe's fuel percentage is not derived by taking into account the discounting of the fuel percentage for Guadalupe's intrastate customers as Mewbourne infers. As Guadalupe states, it is solely at risk for any undercollection of its fuel charge. Therefore, Mewbourne's claim that the Guadalupe's section 311 interstate customers are subsidizing the fuel use of Guadalupe's intrastate customers is not supported by the record in this proceeding. For these reasons, we find that the settlement is fair and equitable and accordingly approve it as filed, without modification. Lastly, as provided in the Settlement, Guadalupe will file a petition for rate approval on or before August 1, 2008.

The Commission orders:

(A) The Settlement is approved as filed, without modification.

(B) Guadalupe must file a petition for rate approval pursuant to section 204.123(b)(2) of the Commission's regulations on or before August 1, 2008.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ The twelve month period, ending March 2005 is the test period in this case.

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(Issued December 29, 2005)

Nora Mead BROWNELL, Commissioner *concurring*:

For the reasons set forth in Green Canyon Pipe Line Company, L.P., 98 FERC ¶ 61,041 (2002), I would not impose a triennial rate approval requirement on Section 311 pipelines. Here, the pipeline has agreed to make a triennial rate filing as part of an overall settlement. Therefore, I agree with the result of this order, which is to approve a settlement.

Nora Mead Brownell